



**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

LEVEL 3 COMMUNICATIONS, LLC,)
)
Plaintiff,)
) Civil No.: 1:09-0082
v.) Judge Trauger
)
MICHAEL R. FLOYD d/b/a FLOYD &)
FLOYD CONTRACTORS,)
)
Defendant.)

**MOTION FOR LEAVE TO FILE
MOTION FOR SUMMARY JUDGMENT
THAT INCLUDES ALTERNATIVE REQUEST
FOR PARTIAL SUMMARY JUDGMENT**

Comes now the Defendant, MICHAEL R. FLOYD d/b/a FLOYD & FLOYD CONTRACTORS (“Defendant”), and moves the Court for leave to include an alternative request for partial summary judgment as part of his intended motion for full summary judgment. In support thereof, the Defendant states the following:

The Court’s Initial Case Management Order (Doc. 18) states that no motion for partial summary judgment shall be filed except upon leave of the court. The Defendant intends to file a motion for full summary judgment, but wishes to include an alternative request for partial summary judgment to dismiss the Plaintiff’s request for loss of use damages. Therefore, the Defendant requests guidance from the Court as to whether leave is required to request partial summary judgment relief in the alternative, and, if so, the Defendant requests that such leave be granted.

First, leave should be permitted as the issue appears to center upon a question of law which would ultimately have to be determined by the Court in any event. The Plaintiff seeks two types of compensatory damages, (1) a claim for alleged repairs costs in the approximate amount of \$45,483.07, and (2) a claim for alleged loss of use damages in the approximate amount of